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8 ELIA RAMIREZ,
9 Plaintiff,
10 v.
11 TRUSPER, INC.,
12 Defendant.

Case No. [5:24-cv-02012-EJD](#)

**ORDER DENYING MOTION
REQUESTING DISCOVERY IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO COMPEL
ARBITRATION**

13 Re: Dkt. No. 19

14 Plaintiff, Elia Ramirez ("Ramirez"), brings this class action suit against Defendant,
15 Trusper, Inc., d/b/a Musely ("Musely"), alleging that Musely allowed Meta to intercept their
16 patients' healthcare data in violation of the California Invasion of Privacy Act, Cal. Penal Code §
17 631, the California Confidentiality of Medical Information Act, Cal. Civ. Code § 56.10, and the
18 California Constitution's invasion of privacy provision. Compl., ECF No. 1.

19 Before the Court is Ramirez's administrative motion requesting discovery in support of
20 Ramirez's opposition to Musely's pending motion to compel arbitration. Admin. Mot. Requesting
21 Disc. ("Mot. for Disc."), ECF No. 19. Musely filed an opposition. Opp'n to Mot. for Disc.
22 ("Opp'n"), ECF No. 20.

23 For the reasons explained below, the Court **DENIES** Ramirez's motion for early
24 discovery.

25 **I. BACKGROUND**

26 Ramirez filed the present class action on April 2, 2024. *See* Compl. On May 24, 2024,
27 Musely filed a motion to compel arbitration. Mot. to Compel Arb., ECF No. 14. Musely argues

1 that Ramirez agreed to an arbitration provision in the terms and conditions when she purchased
2 her prescription online. *Id.* The Parties stipulated to extend Ramirez’s opposition to the motion to
3 compel arbitration deadline to July 8, 2024. Order Granting Stip. to Am. Briefing Schedule, ECF
4 No. 18. On June 10, 2024, Ramirez filed an administrative motion seeking discovery to use in
5 support of her opposition to Musely’s motion to compel arbitration. *See Mot.* Musely filed its
6 opposition on June 14, 2024. *See Opp’n.*

7 Ramirez disputes that she entered into a valid agreement to arbitration and argues that she
8 requires discovery concerning contract formation. Mot. 2–3. Specifically, Ramirez highlights that
9 Musely submitted a declaration in support of the motion to compel arbitration describing how
10 customers purchase products on Defendant’s website, including where the customer would see the
11 links to the “terms” pages with information regarding the arbitration agreement. *Id.* Ramirez
12 argues that the declaration omits information necessary to resolve the contract formation dispute,
13 including the functionality of the hyperlinks on the dates that Ramirez allegedly entered into the
14 arbitration agreement, as well as information regarding alternative ways to purchase products. *Id.*
15 Ramirez seeks limited discovery “for the purpose of resolving the question of whether Plaintiff
16 and Defendant formed an agreement to arbitrate,” but Ramirez does not specify what information
17 she seeks to discover. Mot. 3.

18 Musely argues that discovery is not permitted as of right under the Federal Arbitration Act
19 (“FAA”) before the hearing of Musely’s motion to compel arbitration. Opp’n 2 (citing *Hansen v.*
20 *LMB Mortg. Servs., Inc.*, 1 F.4th 667, 670 (9th Cir. 2021) and *Knapke v. PeopleConnect, Inc.*, 38
21 F.4th 824, 831 (9th Cir. 2022)). Instead, Musely urges the Court to wait until the Court has heard
22 the fully briefed motion to compel arbitration before deciding whether additional discovery is
23 necessary. *Id.*

24 **II. LEGAL STANDARD**

25 The procedure for addressing motions to compel arbitration is set forth in FAA section 4.
26 The Ninth Circuit has summarized Section 4’s requirements as follows:

27 [I]n response to a motion to compel arbitration, the district court must
28 Case No.: [5:24-cv-02012-EJD](#)
ORDER DENYING EARLY DISCOVERY

1 hear the parties. If the court is satisfied that the making of the
2 agreement for arbitration or the failure to comply therewith is not in
3 issue, the court shall make an order directing the parties to proceed to
4 arbitration in accordance with the terms of the agreement. But if the
making of the arbitration agreement or the failure, neglect, or refusal
to perform the same be in issue, the court shall proceed summarily to
the trial thereof.

5 *Hansen v. LMB Mortg. Servs., Inc.*, 1 F.4th 667, 670 (9th Cir. 2021) (internal quotation marks and
citations omitted) (cleaned up) (quoting 9 U.S.C. § 4).

6 Essentially, the Ninth Circuit “confirmed that the FAA's procedure mirrors the three phases
7 of federal civil lawsuits: a motion to compel arbitration akin to a motion to dismiss; followed by
8 optional discovery before summary judgment, if the motion is denied; followed by a mini-trial, if
9 necessary.” *Knapke v. PeopleConnect, Inc.*, 38 F.4th 824, 833 (9th Cir. 2022) (citing *Hansen*, 1
10 F.4th at 670).

11 A court may still authorize early discovery for the parties' and witnesses' convenience and
12 in the interests of justice. Fed. R. Civ. P. 26(d). Courts within the Ninth Circuit generally
13 consider whether a plaintiff has shown “good cause” to conduct discovery prior to the Parties' the
14 Rule 26(f) conference. *See, e.g., IO Grp., Inc. v. Does 1–65*, 2010 WL 4055667, at *2 (N.D. Cal.
15 Oct. 15, 2010); *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275–77 (N.D. Cal.
16 2002). “Good cause may be found where the need for expedited discovery, in consideration of the
17 administration of justice, outweighs the prejudice to the responding party.” *Semitool*, 208 F.R.D.
18 at 276.

19 III. DISCUSSION

20 The Court finds that Ramirez has failed to show good cause to permit early discovery for
use in her opposition to Musely's motion to compel arbitration.

21 First, Ramirez has not informed the Court what information she requires to oppose
Musely's motion. While she has stated the purpose of early discovery—to resolve whether the
22 Parties formed a valid agreement to arbitrate—she has not stated what information she needs to
resolve that question and why. Instead, Ramirez's motion raises arguments regarding weaknesses
23 in Musely's evidence. Mot. 2–3. These arguments are appropriate to raise in Ramirez's
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1 opposition to the motion to compel arbitration, but they do not show why discovery is needed at
2 this time.

3 Second, the Court cannot determine whether discovery is needed because the Court does
4 not have the benefit of the Parties' briefing on the underlying motion to compel arbitration. It may
5 be that Ramirez highlights the specific discovery necessary to resolve factual disputes in her
6 opposition, to which Musely would have the opportunity to address in its reply. But as it stands,
7 particularly considering the vagueness in Ramirez's present request for discovery, the Court does
8 not have the complete picture of the factual disputes. *See, e.g., Beltran v. PeopleReady, Inc.*, No.
9 3:23-CV-00179-WHO, 2023 WL 3092973, at *8 (N.D. Cal. Apr. 25, 2023) (allowing limited
10 discovery regarding arbitration contract formation after receiving all briefing on motion to compel
11 arbitration and permitting parties to file supplemental briefs prior to the hearing based on new
12 discovery).

13 Third, the FAA's procedure allows for optional discovery, if necessary, after the Court has
14 "heard" the motion to compel arbitration. *See Knapke*, 38 F.4th at 833; *Hansen*, 1 F.4th at 670.
15 Ramirez has failed to persuade the Court that departure from that procedure is necessary here.

16 Therefore, the Court finds that Ramirez has failed to show "good cause" to permit early
17 discovery.

18 **IV. CONCLUSION**

19 Based on the foregoing, the Court **DENIES** Ramirez's request for discovery at this time.
20 Ramirez may re-raise her request in her opposition to Musely's motion to compel arbitration if
21 necessary.

22 **IT IS SO ORDERED.**

23 Dated: July 3, 2024

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EDWARD J. DAVILA
United States District Judge